

18th September 2018

Policy, Performance & Resources

Data Protection Officer

Report of: Philip Ruck – Chief Executive

Wards Affected: No wards specifically

This report is: Public

1. Executive Summary

- 1.1 At the Regulatory and Governance Meeting, 11th July 2018, the committee agreed that ***“An individual be identified as a DPO* from within our authority and that this recommendation be brought to the next Policy, Projects and Resources Committee”***

** Data Protection Officer*

- 1.2 Put forth by the European Parliament, the European Council, and the European Commission to strengthen and streamline data protection for European Union citizens, the GDPR** calls for the mandatory appointment of a DPO for any organization that processes or stores large amounts of personal data, whether for employees, individuals outside the organization, or both. DPOs must be “appointed for all public authorities, and where the core activities of the controller or the processor involve ‘regular and systematic monitoring of data subjects on a large scale’ or where the entity conducts large-scale processing of ‘special categories of personal data,’”.

*** General Data Protection Regulation*

- 1.3 The DPO appointment is currently fulfilled on a shared management arrangement with Thurrock Council. The current Brentwood nominee for the DPO is Mr Lee Henley.

2. Recommendation(s)

2.1 Shared arrangements that are currently in place with Thurrock Council to continue and are to be reviewed in September 2019.

2.2 That performance continues to be monitored to ensure that the obligations of the Council, under the control and management of the DPO, are being met by the shared management agreement in place.

3. Introduction and Background

3.1 The data protection officer is a mandatory role under Article 37 for all companies that collect or process EU citizens' personal data. DPOs are responsible for educating the company and its employees on important compliance requirements, training staff involved in data processing, and conducting regular security audits. DPOs also serve as the point of contact between the company and any Supervisory Authorities (SAs) that oversee activities related to data.

3.2 As outlined in the GDPR Article 39, the DPO's responsibilities include, but are not limited to, the following:

3.2.1 Educating the company and employees on important compliance requirements;

3.2.2 Training staff involved in data processing;

3.2.3 Conducting audits to ensure compliance and address potential issues proactively;

3.2.4 Serving as the point of contact between the company and GDPR Supervisory Authorities;

3.2.5 Monitoring performance and providing advice on the impact of data protection efforts;

3.2.6 Maintaining comprehensive records of all data processing activities conducted by the company, including the purpose of all processing activities, which must be made public on request;

3.2.7 Interfacing with data subjects to inform them about how their data is being used, their rights to have their personal data erased, and what measures the company has put in place to protect their personal information.

3.3 The detailed knowledge required to provide the functions outlined in (3.2) above, is not available within the existing workforce and would require the recruitment of an individual on a part-time basis, which places additional pressure on the Council's financial resources.

- 3.4 The Council has shared resource at a senior level, (Chief Executive: Monitoring Officer, Development Management, Revs and Bens and many more), which have operated without impacting the delivery of their functions.
- 3.5 The role of DPO is not seen as a fulltime resource and consequently, the sharing of such a post, undertaken by an experienced and knowledgeable officer, combined with appropriate reporting and monitoring, is to the benefit of both organisations.
- 3.6 Although not regarded as a full-time role, the service provided by Thurrock ensures an information security officer is available on a full-time basis should the need arise. Additionally, it provides a level of resilience, due to the size of the team, that can not be matched by a single person.
- 3.7 These advantages are regarded as mitigating key risks, particularly the appointment of a suitably skilled officer in a currently competitive market. Also, there is a need for an understanding of Local Government and Thurrock can bring their expertise and best practices to assist Brentwood.
- 3.8 Therefore, an appointment of an internal DPO would need to be in addition to the arrangement with Thurrock. The benefit that this additional post brings would need to be weighted up against the costs and if this was an effective use of resources.

4. Reasons for Recommendation

- 4.1 To ensure that the Council has in place a resource that is flexible, accountable, knowledgeable and effective, it is recommended that the current arrangement with Thurrock Council remains in place.

5. Consultation

- 5.1 None

6. Implications

Financial Implications

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6.1 The agreed contract cost with Thurrock is £37k per annum. This is funded through a vacant post that would have been assigned as Brentwood's DPO. Therefore, costs are captured within existing budgets.

6.2 The vacant role is budgeted at more than the agreed contract cost, therefore this arrangement has gained a financial saving to the Council.

6.3 **Legal Implications**

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6.4 Section 69 of the Data Protection Act 2018 requires the Council to designate a data protection officer, and (under s70) ensure that the DPO does not perform a task or fulfil a duty that would result in a conflict of interest.

6.5 Guidance provided by the Information Commissioners Office specifically states that a DPO can be an existing employee or externally appointed, and that the Council can contract out the role of DPO externally, based on a service contract with an individual or an organisation. The guidance makes it clear that if the DPO is an internal employee the duties of the DPO must not lead to a conflict of interests. The benefit of an external appointment is that this will greatly reduce the likelihood of such conflict emerging.

6.6 **Other Implications** (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

6.7 None

7. **Background Papers**

7.1 None

8. **Appendices to this report**

None

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